



IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CO 430 OF 2025

BOARD OF TURSTEES FOR THE PORT OF SYAMA PRASAD

MOOKERJEE PORT, KOLKATA

VS

CITY VARIETY STORES

**For the Petitioner : Mr. Subhankar Nag, Adv.
Mr. Proteek Debnath, Adv.**

**For the Opposite
Party : Mr. Debangshu Biswas, Adv.**

Last heard on : 04.09.2025

Judgement on : 10.09.2025

CHAITALI CHATTERJEE DAS, J. :-

1. The petitioner being Board of Trustees for the port of Shyama Prasad Mukherjee Port, Kolkata (formerly known as Board of Trustees of the Port of Kolkata) a statutory body constituted under the Major Port Trust Act, 1963 has come before this Court under Article 227 of the Constitution of India challenging an order dated 11th September, 2024, dismissing the application filed by the petitioner for recalling of the order dated 9th April, 2024, for condonation of delay and admission of appeal.
2. Shorn of any unnecessary details the case of the petitioner emanated from a proceeding initiated under the Public Premises, Eviction of Unauthorised



Occupants Act, 1971, hence forth to be referred as the Act of 1971 in respect of a premises situated at the first floor of SP Mukherjee port, Kolkata, canning warehouse on the west side of Strand Road against the present Opposite Party City Variety stores.

3. The said premises was on month to month license basis occupied by the Opposite Party with effect from first January, 1979 with the standard license fee of ₹355/- per 100.Sq. Metres per mensem along with other applicable taxes. Such license was later on terminated due to non-payment of the license fees and unauthorised subletting vide an ejectment notice dated August 21, 1985 made effective from November 1, 1985. Subsequently, the petitioner had approached the Estate Officer by application dated April 29, 2008 seeking eviction and recovery of dues in respect of the said premises. It was initiated in the year 2015, registered as P.P proceeding No. 1463 of 2015 after serving all notices on the opposite party, they failed to appear before the Estate Officer and on August 30, 2018 eviction order under Section 5 of the said Act of 1971 was passed, which was duly served upon the Opposite Party on September 4, 2018.
4. On the strength of the order of eviction ,the possession of the said premises was recovered by SMPK on October 31, 2018 and as the damages to the tune of ₹65, 73, 128 for the period from 1.11.19 85 to 31.10.2018, accumulated in respect of the subject premises the petitioner had to initiate the proceeding under Section 7(2) of the Act of 1971. On January 11, 2022, the Estate Officer passed the final order, thereby admitting the claim of ₹65, 73, 128 along with compound interest @ 6.20 per annum from November 1, 1985 to October 31, 2018. Challenging the same the Opposite Party filed an appeal along with an



application for condonation of delay in filing such appeal for 22 days and the Learned Court after hearing the appellant observed no delay has occurred and on the basis of the pleadings admitted the Appeal on April 9, 2024 as an empty formality and without calling for written objection to the said application.

5. The said order was served on the petitioner on April 10, 2024, and the matter appeared before the Court on April 30, 2024, when the direction was passed to the applicant to serve the copy of the Misc. appeal, stay application and application for condonation of delay and after receiving the same petitioner on August 3, 2024 filed the written objection and also filed an application for recalling of the order dated April 9, 2024. On August 3, 2024, the Learned Court without hearing the application for recalling of the order passed an interim order of stay.
6. The learned Court rejected the stand of the petitioner and rejected the application for recalling by its order dated September 11, 2024.
7. Being aggrieved there by the petitioner has come up before this Court. The written notes of argument filed by the petitioner where by the petitioner has canvassed three points before this court which are
 - a) the applicant/Opposite Party has no locus to file the appeal, and it was not maintainable in the eye of law.
 - b) the application under section 5 was filed with mala fide intention and suppression of material fact warranting reversal of the order dated April 19, 2024, and dismissal of the appeal.
 - c) the criteria for condonation of delay, embodied in the Act of 1971 and the criteria for condonation of delay is different from limitation act and such mandatory



criteria/parameters have also not been followed while allowing the application for condonation of delay.

8. It is submitted by the learned advocate representing the petitioner that the opposite party is a sole proprietorship firm, but the person filed the appeal before the learned court is not even the named sole proprietor as it is mentioned in the cause title 'represented by the interested person, Shri Pradeep Kumar Dutta' and also describe himself of "*having some relation with the previous owner of City Variety Store*" who has no privity of contract with SMPK. That apart a sole proprietorship firm cannot file or maintain litigation without implicating the name of the proprietor and in this regard, reliance has been put on ***SVAPN constructions vs IDPL Employees Cooperative Group Housing Society Limited and others***¹ reported in, paragraphs 7, 16 and 17.
9. Further argued that the sequence of the proceedings before the Estate Officer would clearly show that how due intimation was given to the opposite party regarding the proceeding initiated by the Estate Officer and that the service was affected upon the opposite party who appeared before the execution proceedings and lastly on second February, 2024 and 11th March, 2024 and volunteered to make payment of the entire amount along with the principal amount, but refused to pay any interest amount. After that the order dated 11th January, 2022 was also served upon the Opposite Party on 8th March 2022 at 12.10 p.m. and subsequently notice under Section 7 of the Act of 1971 was served on 7th September 2022 through the concerned Police Station.
10. It is further submitted that Section 5 application seeking condonation of delay has been filed on 26th February, 2024 alleging that the copy of the order

¹ 2005 SCC online Delhi, 1392



under Section 7 of the Act of 1971 was only received by the Opposite Party on 2nd February, 2024, which is completely false statement on oath as the Opposite Party had clear knowledge of the fact of such order and also that the same has been put to execution. It is settled proposition of law that a party has to act bona fide and explanation provided has to be reasonable and plausible and a party fails to do so application has to be dismissed. In this regard, reliance is placed on **Balwant Singh.(dead) versus Jagdish Singh and others**².at paragraph 26, 27, 32.

11. Further argued that it is also settled proposition of law that fraud vitiates everything and hence the order condoning the delay is an order in nullity and hence the recalling application needs to be considered. Reliance is placed in this regard on **Ramchandra Singh versus Savitri Devi and others**³
12. The learned advocate representing the petitioner strenuously argued that the Act of 1971 itself is a complete code and the parameters of condonation of delay has been clearly mandate in section 9 of the said act. The application for condonation of delay has to be in respect of exceptional cases and only after the satisfaction of the appellate authority to be recorded in writing. The order of the learned Court dated 9th April, 2024 is completely silent and no reason was assigned whatever in condoning the delay where only 22 days delay was mentioned and learned court observed there is no delay.
13. Furthermore the application for recalling of the order was also rejected on complete erroneous premise, and in this regard, reliance is placed in a decision

² (2010) Volume 8 SCC 685

³ (2003) 8 SCC 319



reported in, **S.D Bandi versus Divisional Traffic Officer, Karnataka State**

Road transport Corporation⁴ and others on paragraph 33.17,

14. On the other hand, the case of the opposite party as submitted through their written notes of argument condemned the filing of the recalling application as well as this revisional application which seriously suffers from various procedural improprieties. It is their specific case that after lapse of 23 years on 29th April, 2008 the Estate officer initiated the proceeding in the year 2015, and after a lapse of seven years from the said application passed the final order of eviction under Section 5 of the said act 1971 on 30th August, 2018 and took the possession of the premises on 31 October 2018, when passed the final order under section 7 of the said Act on 11th January, 2022.
15. Therefore, there occurs an inordinate delay of 30 years which is not permissible for recovery of damage amount of ₹65 lakhs for the period of 1st November, 1985 to 31 October 2018. The further stand taken by the opposite party that though the port trust raised the point of erroneous order passed by the learned court while the Section 5 application was allowed, the Port Trust did not challenge the said order, but in their ground mentioned in this revisional application has incorporated the same and therefore this Court has no obligation to interfere with the same. Thirdly, the present petitioner never challenged the finding of the order impugned regarding non-filing of Section 5 application of the said act which is the actual cause of action read with order dated 9th April, 2024. That apart on conjoint reading of Section 4 and Section 9 of the act of 1971 it is clear that any person or person concerned has the right to get show cause for reply and obviously after considering the reply, if

⁴ (2013) 12 SCC 631



any final order is passed by the Estate Officer, the right to file appeal continues. The Port Trust refuses to accept the decretal amount of ₹65 lakhs offered by the Opposite Party on the ground of their inability to accept being a statutory body without interest, but not on the ground that opposite party has no locus standi to pay the dues on behalf of the firm. Moreover, this point was never raised before the learned court below, and the same cannot be acceptable by this Court in the revisional jurisdiction. Therefore, the decision relied upon by Port Trust in **SVAPN constructions vs IDPL Employees Cooperative Group Housing Society Limited and others**⁵, did not deal with the specific provision of Section 9 of the said Act and is not applicable in the present case.

- 16.** The further argument advanced by the Opposite Party that it is the statutory obligation of the Port Trust/Estate officer to communicate the final order/judgement passed under Section 7 to the aggrieved party, but it is clear they were served with the notice but never communicated the final order under the provision as prescribed by the statute. The date of communication is the essential ingredient for limitation to file an appeal under section 9 of the Act of 1971, but no document was placed to show that due communication of the decree/order was made as per Act of 1971, and hence they have no right to disregard the impugned order. Therefore, the decision relied upon by Port trust reported in **Balbant Singh(dead) (supra)** is not applicable. Lastly, if this court allowed the present application at this stage, then all substantial question of law involved in the appeal will remain unheard and it would cause serious prejudice to the Opposite Party, when the Supreme Court repeatedly

⁵ 2005 SCC online Delhi, 1392



held the court should take liberal view while considering an application for condonation of delay, keeping in mind, the substantial question of law involves in the matter. Lastly the Authority filed the application after the statutory period is over and without being supported with an application for condonation of delay. Accordingly, prayed for dismissal of this revisional application.

17. Having heard both the learned counsel and going through the materials on record and the pleadings coupled with the order impugned, it can be gathered that the present revisional application is filed against an order of refusal to recall the order dated April 9, 2024, for condonation of delay and admission of appeal, passed by the Learned Court. The chronological history of the case primarily reveals that the application in respect of a proceeding was initiated under the Public Premises (Eviction of unauthorised Occupants Act) 1971 in respect of the property where the Opposite Party was in occupation at a month to month license basis since 1 January 1979, and the petitioner revoked the license on account of breach of contractual terms by the Opposite Party on account of non-payment of monthly license fees and unauthorised parting of possession. The order of the estate officer was passed for eviction against the opposite party on 30th August, 2018 and the possession of the subject premises was recovered by SMPK on October 31, 2018.

18. In the application filed under Section 5 of Limitation Act it was admitted by the appellant/Opposite party that sometimes in the year 2023 they received some notice at the address different from the suit premises issued by the certificate officer, 24 parganas south for recovery of certain demand and interest in respect of a case No 36/Misc/2022 and on receipt of the same



they appeared and came to know about the recovery proceeding and passing of order by the Estate officer and accordingly prayed for some time to collect the documents from SMPK . After being failed to collect the same wrote a letter to SMPK but that was not responded and came to learn about the final order passed only on 2nd February 2024 as per direction of the Estate Officer and thereafter in completing the process the statutory period of filing of the appeal got expired . It is seen further that on account of the damage accumulated from the period from 1.11. 1985 to 31.10.2018, the proceeding under Section 7(2,) read with section 7(2A) of the Act of 1971 was initiated. The final order of that proceeding was also passed on January 11, 2022, admitting the claim of ₹65, 73, 128 along with compound interest.@ 6.20per annum from November 1, 1985 to October 31, 2018.

19. The opposite parties preferred the statutory appeal on February 26, 2024 after receiving the final order on February 15, 2024, which is apparently within the statutory period of time of limitation but whether the said date of receipt of the copy of the order to be considered as justified or not is the domain of the Learned Court while considering the application for condonation of delay. The Opposite Party/Appellant also filed an application for stay of all further proceedings and an application under Section 5 of Limitation Act along with the Appeal. According to the petitioner, there is a delay of 776 days in filing the appeal by the Opposite Party and on the other hand, the Opposite Party mentioned about 22 days delay as is apparent from the application filed under Section 5 of Limitation Act, 1963, read with Section 9 of the Act of 1971. Therefore whether there was 776 days delay or delay of 22 days the factum of delay was admitted in preferring the appeal by the opposite party before the



Learned Trial Court and therefore it was the bounden duty of the Learned Trial Court to decide such application and to dispose of the same before proceeding for hearing of stay application and for hearing of appeal. It is undisputed that in case of any such situation the court is not denuded to pass an order of interim stay only till the hearing of the application for condonation of delay but the Learned court failed to assign any such reason while granting the order of stay. The order was passed by the Learned Court on 9th of April, 2024, considering the submission of the learned counsel represented the appellant before the said Court, and admitted the appeal with the observation that the appeal has been filed within the statutory period of limitation and directed the Respondent/Appellant to serve the notice upon the Petitioner in this revisional application being the Respondent herein and fixed the date for appearance and hearing of stay petition. Nothing is found from the fore corner of the order about any intentional laches on the part of the Port Trust Authority and or despite receiving the notice failed to turn up on the date. The Learned Court decided the application under Section 5 of the condonation of, delay without giving any opportunity of hearing of the petitioner herein on the pretext of no delay and without considering the guideline framed by the Hon'ble Supreme Court ***S.D Bandi vs Divisional Traffic Officer KSRTC & Ors (supra)***

20. The petitioner /Authority/Respondent appeared on April 30, 2024 with a prayer for direction upon the Appellant to serve the copy of the Memorandum of Appeal, stay application and application for condonation of delay with relevant annexure, which was allowed by the learned Court on 30 April 2024. On 3rd of August 2024, again, the court was of the opinion to fix the hearing of



the application filed by the respondent for recalling of the order condoning the delay in filing the appeal and the stay application filed by the applicant, and on the prayer of Appellant praying for stay of execution and passed the order granting stay of the execution proceeding.

21. Therefore, there is no room for doubt that no right of audience was given to the petitioner by the Learned Court and passed the order of condonation of delay with the observation of not having delay. It is settled law that the court while considering the application for condonation of delay must be satisfied about the sufficient cause and the explanation given by the petitioner/applicant, the acceptability of such explanation whether justifiable or not, and if any negligence or ulterior motive to delay the proceeding by the appellant exists or not. In this regard the judgement of the Hon'ble Supreme Court as relied upon by the learned advocate representing the petitioner in ***Balwant Singh versus Jagdish Singh and others (supra)*** may be look into. It was observed that the liberal construction of the expression sufficient cause is intended to advance, substantial justice, which itself presupposes, no negligence or action on the part of the applicant, to whom one of bona fide is imputable. The expression sufficient cause implies the presence of legal and adequate reasons. The word sufficient means adequate enough, as much as may be necessary to answer the purpose intended.

22. The order passed by the Learned Court on 9th of April 2024 is devoid of any such reason, excepting the fact that the appeal has been filed within the statutory period of limitation when the specific case of the appellant therein was about a delay of 22 days. Since the matter pertains to public premises, in terms of the said Act of 1971 there are certain parameters for considering the



delay as Section 9 of the said Act of 1971 mandates which reads as follows;

Appeal;

‘an appeal shall lie from every order of the estate officer made in respect of any public princess under Section 5 or Section 5B or Section 5C or Section 7 to an appellate officer who shall be the district judge of the district in which the public premises are situated or such other Judicial Officer in that district of not less than 10 years standing as the district judge designate in his behalf .An appeal under sub-Section (1) shall be preferred; in the case of an appeal from order under Section 5, within 12 days from the date of publication of the order under subsection one of that Section. In the case of an appeal from an order under section 5B or section 7, within 12 days from the date on which the order is communicated to the applicant and In the case of an appeal from an order under section 5C, within 12 days from the date of such order;

Provided that the appellate officer may entertain the appeal in exceptional cases after the expiry of the said period, if he is satisfied for reasons to be recorded in writing that there was compelling reasons which prevented the person from filing the appeal in time.

- 23.** In the application filed under Section 5 of the Limitation Act manifests that the appeal was preferred against the ex-parte impugned order dated 27 January 2022, read with the final order dated 11 January 2022, and appeal was filed on 26 February 2022, where a delay of 11 days from the lapse of statutory period and with a delay of 22 days from the date of communication of ex-parte impugned order of Estate Officer, SMPK. The observation of the Learned Court that the final order was received on 15 February 2024, and



appeal was filed on 26 to 2024 comes within statutory period of limitation is per se illegal since the Learned Court did not discuss the relevant provision and its applicability after scrutinising the case of the appellant and thereby dehors the provision in this regard and therefore has no basis in the eye of Law.

24. The Learned Court while deciding the recalling application as filed by the petitioner, discussed certain aspects of the case which ought to have been dealt with while hearing the application under Section 5 of the Limitation Act giving opportunity to controvert the case by the appellant.

25. It is also a settled proposition of law that the jurisdiction under Article 227 of the Constitution of India must be sparingly exercised and may be exercised to correct errors of jurisdiction and the like, but not to upset pure finding a fact which falls in the domain of the Appellate Court. The object of the act is to recover expeditiously the public premise for its utilisation for the interest of public and therefore considering its seriousness and that the delay in filing the appeal was not duly explained before the Court as the application under section 5 of limitation act was not heard by the learned court after giving an opportunity of hearing to the present petitioner and without assigning any reason in conformity with the provision as discussed above, this court inclines to invoke jurisdiction under Article 227 of the Constitution of India and accordingly set aside the order dated September 11, 2024 passed by the Learned Trial Court refusing to recall the order passed on April 9, 2024 for condonation of delay. In the case of ***D. Bandi vs Divisional Traffic Officer Karnataka State Road Transport Corporation & ors (supra)*** it was observed by the Supreme Court at 33.7,



33.17 ;the liberty of the Appellate officer to condone the delay in filing the appeal under section 9 of the Act should be exercised very reluctantly and it should be an exceptional practice and not a general Rule.’

26. At this stage this court also cannot be oblivious of the fact that the petitioner too filed the recalling application after expiry of the statutory period and being an Authority is not absolved from the liability to follow the Rules. Not a single line has been averred in this revisional application on the point of delay in filing the application to recall the order by the petitioner for consideration. In this regard the submission advanced by the Learned Advocate representing the Port Trust that since the purpose of this Act is to recover the possession from the unauthorised occupants for the interests of public the limitation Act is not applicable even if any delay is occurred in taking the appropriate steps within time by the Authority . In this regard the decision **of The Board of Trustees for the Port of Kolkata vs M/S Automobile Association of Eastern India⁶**, as relied upon by the petitioner be look into. The Co-ordinate Bench while deciding the case took note of the decision of **New Delhi Municipal Committee Vs Kalu Ram⁷** where the Supreme Court dealt with an issue as to whether the provisions of Limitation Act would apply in a proceeding initiated by the Estate officer under Section 7 of the Act of 1971 and the Hon’ble Supreme Court held that Section 7 only provides a special procedure for realisation of rent in arrears and does not constitute a source or foundation of a right to claim a debt otherwise time barred . It is a section which creates special procedure for obtaining payment

⁶ C.O. no 1945 of 2019

⁷ (1976) 3 SCC 407



of moneys; It is not a Section on which purports to create a foundation upon which to base a claim for payment. It creates no new rights. We are clear that the word “payable” in section 7 in the context in which it occurs, means legally recoverable. Admittedly a suit to recover the arrears instituted on the day the order under Section 7 was made would have been barred by limitation’.

Therefore the provision of limitation Act is applicable in the proceeding under the Act of 1971. In the case of *The Board of Trustees for the Port of Kolkata vs M/S Automobile Association of Eastern India* also it was observed that provision of limitation Act would apply in a proceeding initiated by the Estate officer under section 7 of the Act but that point will be considered by the Learned Appellate court while considering the Appeal if it otherwise is found maintainable.

27. The instant case is on different footing as the Authority failed to take appropriate step to recall the order of admission of Appal under challenge and if that delay can be fatal for the Authority in challenging an order which apparently has violated the principles of natural justice as no right of audience was given to them.

According to the Authority the delay is of 776 days delay in preferring the appeal and as per the Appellant only 22 days delay and the learned court considers no delay that too without giving any opportunity of hearing to the Authority, whether this court while exercising jurisdiction under Article 227 of the constitution of India can ignore such a patent illegality on the ground of mere technicalities or to allow the Authority to place their objection regarding the inordinate delay as raised before this court keeping in mind the purpose



and objective of the Public Premises Unauthorised Occupation Act 1971. In

this regard the decision of **Ramesh Chandra Shankla (supra) paragraph 98**

is noted which held

‘98....., that powers under Article 226 and 227 are discretionary and equitable and are required to be exercised in the larger interest of justice. While granting relief in favour of the petitioner, the court must take into account the balancing interests and equities. It can mould relief considering the facts of the case. It can pass appropriate orders which justice may demand and equities may project. As observed by this court in Shiv Shankar Dal Mills vs State of Haryana, 28, courts of equity should go much further both to give and refuse relief in furtherance of public interest. Granting or withholding of relief may properly be dependent upon considerations of justice, equity and good conscience’.

28. Therefore considering the larger aspect of the matter and that the matter pertains to Public Premises where the opposite party is declared as an unauthorised occupants and hence to be dealt with in strict adherence to the Act of 1971 this court direct the Learned Court to hear the application filed by the petitioner to recall the order dated April 9, 2024 afresh after giving opportunity of hearing to both the parties. That apart it can be seen that is no specific provision in the Act of 1971 to recall any order passed by the Court. So it is to be presumed that the principles of Code of Civil Procedure is applicable



and the such application for recall of the Court was considered under inherent power of the Court where provision of Limitation Act does not apply.

- 29.** The Learned court is further directed to dispose of the application as expeditiously as possible without granting any unnecessary adjournment to either of the parties. The other points with regard to the maintainability of Appeal as raised by the Petitioner before this Court is left open to be decided by the Learned Appellate Court.
- 30.** In view of the above, the order passed by the land court dated 11 September 2024, and the order dated 9 April 2024, are hereby set aside.
- 31.** Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

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